

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Charlotte Ann Smith,) Civil Action No. 0:10-882-JFA -JRM
)
Plaintiff,)

-VS-)

Chase Bank and Mortgage, Bank of America,)
National Association, as Successor by Merger to)
LaSalle Bank, as Trustee for Certificate Holders)
of EMC Mortgage Loan Trust 2005-A Mortgage)
Loan Pass-Through Certificates Series 2005-A,)
Guardian Fidelity Mortgage Inc American NA)
and their members or shareholders,)
President & CEO Howard Wright,)
Assistant Manager Stacy Youngblood,)

Defendants.)
_____)

REPORT AND RECOMMENDATION

Charlotte Ann Smith,)
) Civil Action No. 0:10-3168-JFA-JRM
Plaintiff,)

vs.)

Bank of America, NA, as Successor by Merger)
La Salle Bank NA as Trustee for Certificate holder)
of EMC Mortgage Corporation, Loan Trust)
2005-A- Mortgage Loan Pass Through Certificates)
Series 2005-A; EMC Mortgage Corporation, and)
Parent Companies; The Bear Stearns Companies)
LLC; JP Morgan Chase & Companies; Guardian)
Fidelity Mortgage, Inc.; Guardian President and)
CEO Howard H. Wright, Jr.; Guardian Assistant)
Manager Stacy Youngblood; Guardian Chairman)
of the Board John Good; Guardian Member)
Owners/Shareholder/Stockholders,)

Defendants.)
_____)

Pro se Plaintiff, Charlotte Ann Smith (“Smith”), originally filed the above cases in the Court of Commons Pleas for York County. Smith’s allegations evolve from her attempt to develop real property she owns located at 4986 Mt. Gallant Road, Rock Hill, South Carolina into a multi-family residential complex. She alleges that Bank of America, NA (“Bank of America”) holds a first mortgage on the property and Guardian Fidelity Mortgage, Inc. (“Guardian Fidelity”) holds a second mortgage.

Smith v. Chase Bank and Mortgage, et al., Civil Action No. 10-882-JFA-JRM (“Smith I”), was filed in state court in early 2010. Some of the Defendants moved to dismiss, or in the alternative, to make the claims more definite and certain under the South Carolina Rules of Civil Procedure. Apparently in response to that motion, Smith filed but failed to serve on Defendants, an amended complaint. After a hearing in state court, Smith was ordered to file an amended complaint making her claims more definite and certain. She filed a “Third Amended Complaint” in state court on April 1, 2010. That complaint was removed to this Court on April 8, 2010, and became the operative complaint of Smith I.

After Smith I was removed to this Court, Smith filed a second case in York County making similar allegations made in Smith I against essentially the same Defendants. The amended complaint in the second action was removed to this Court on December 14, 2010 and was filed as Smith v. Bank of America, NA, et al., Civil Action No. 10-3168-JFA-JRM (“Smith II”).

On March 16, 2011, the Honorable Joseph F. Anderson, Jr., United States District Judge, ordered that all claims in Smith I against the Guardian Fidelity’s Members and Shareholders, all

claims against the Guardian Defendant¹ under the Fair Debt Collection Practices Act and for civil conspiracy be dismissed.

On November 23, 2010, Smith filed a response to the motion of the Guardian Defendants for sanctions against her in Smith I.² (See Doc.No. 36). In that pleading, Smith stated that she had filed a second case in York County based on new evidence (i.e., the case later removed to this Court - Smith II), and that “(s)ince all the legal issues have been filed under a new case in York County, SC in the Court of Common Pleas, please cancel this case (Case No. 0:10-882-JFA-JRM) in Federal Court.” (Doc.No. 36, p. 4) (emphasis in original). Smith’s response to the motion for sanctions was not docketed as a motion to dismiss Smith I.

Smith has reiterated her desire to dismiss Smith I. See “Motion Request” (Doc.No. 65 in Smith I and Doc. No. 39 in Smith II). In those pleadings, Smith stated that the reason she did not object to the Report and Recommendation discussing the motion to dismiss filed by the Guardian Defendants in Smith I was that she “had already requested that Case No. 0-0882-JFA-JRM be totally dismissed.” (*Id.*, p. 1). She then reiterated her intention that Smith I should be dismissed. (*Id.*, p. 2). Her motion to dismiss in Doc.No. 39 was docketed in Smith I.

Based on a review of the record, it appears that Smith wishes that Smith I and Smith II not

¹The “Guardian Defendants” in Smith I are Guardian Fidelity Mortgage, Inc. American NA and their members and shareholders, President and CEO Howard Wright and Assistant Manager Stacy Youngblood.

²The motion for sanctions was denied January 13, 2011.

be consolidated, that Smith I be dismissed, and that she be allowed to proceed in Smith II. It is therefore recommended that Smith I be **dismissed**.



Joseph R. McCrorey
United States Magistrate Judge

Columbia, South Carolina

July 6, 2011

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).